

MINUTES
REGULAR CITY COUNCIL MEETING
CITY COUNCIL OF THE CITY OF YUMA, ARIZONA
CITY COUNCIL CHAMBERS, YUMA CITY HALL
ONE CITY PLAZA, YUMA, ARIZONA
FEBRUARY 3, 2010
5:30 p.m.

CALL TO ORDER

Mayor Krieger called the City Council meeting to order.

INVOCATION/PLEDGE

Mose Vance, Pastor of the Pentecostal Church of God, gave the invocation. **Mendoza** led the City Council in the pledge of allegiance.

ROLL CALL

Councilmembers Present:	Stuart, Mendoza, Beeson, McClendon, Brooks-Gurrola, Johnson and Mayor Krieger
Councilmembers Absent:	none
Staffmembers Present:	City Administrator, Mark Watson Purchasing and Contracts Manager, Bill Pfannenstiel Director of Engineering, Paul Brooberg Utilities Director, Hank Baer Various Department Heads or their representative City Clerk, Brigitta M. Kuiper

FINAL CALL

Mayor Krieger made a final call for the submission of Speaker Request Forms from members of the audience.

PRESENTATIONS

- Clean and Beautiful Commission recognition of Desert Pride Community 4-H Club
 - **John Stutzman**, Chairman of the Clean and Beautiful Commission, recognized Desert Pride Community 4-H Club for their efforts in helping cleaning up an elderly resident's property.
 - **Mayor Krieger** presented the Desert Pride Community 4-H Club with a certificate of recognition for "Taking Pride in Yuma".
- **Watson** recognized several City employees who assisted with the last week's storm clean up.

I. CALL TO THE PUBLIC

Daniel Sanchez, 2776 S. Avenue 2 ½ E, #88, expressed his concern that cities are too reliant on Federal and State funding. He suggested the following solutions to the City Council to help restore the City of Yuma's economy: use government buildings/land for the welfare of the people and to attract new business, utilize local talent in the community, and look for action-oriented citizens in the community to step up and offer solutions.

II. MOTION CONSENT AGENDA

Motion (Mendoza/McClendon): To adopt the Motion Consent Agenda, with the exception of item B4; which was pulled by Beeson due to a potential conflict. Voice vote: **approved** 7-0.

A. Approval of minutes of the following City Council meetings:

Regular Worksession	November 17, 2009
Regular City Council Meeting	November 18, 2009
Regular City Council Meeting	December 2, 2009

B. Approval of Staff Recommendations:

1. Executive Sessions may be held at the next regularly scheduled Special Worksession, Regular Worksession and City Council Meeting for personnel, legal, litigation and real estate matters pursuant to A.R.S. § 38-431.03 Section A (1), (3), (4), and (7). (Attny)
2. Approve a #6 Bar (Person Transfer/Interim Permit) Liquor License application submitted by Bonny Elaine Rhodes, agent for Yuma Yim Hotel, LLC dba Clarion Suites Yuma, 2600 S. 4th Avenue, Yuma, Arizona. (LL10-01) (Admin/Clerk)
3. Approve an application for a Temporary Extension of Premises/Patio Liquor License Permit submitted by William Edward Malo, agent for LZ Bar & Grill, for a 3rd Annual Anniversary Party scheduled for April 16-18, 2010. The event will be held at 2175 S. Harley Drive, Yuma, Arizona. (EP10-01) (Admin/ Clerk)
4. Removed for separate consideration; see below.
5. Award to the lowest responsive/responsible bidder for 40th Street Water Transmission Line Phase II project at a total cost of \$2,709,537.05 to DPE Construction, Yuma, Arizona. (Bid No. 2010000191) (Eng)
6. Authorize the execution of an Intergovernmental Agreement (IGA) with the City of Somerton for traffic signal operation, maintenance, and emergency repair at four locations in Somerton, Arizona. (Eng)

Motion Consent Agenda Item Removed for Separate Consideration

- B.4 Declare as surplus and authorize the disposal of certain City personal property and equipment at the annual public auction scheduled for February 27, 2010 or by online public auction. (Bid No. 2010000305) (Purchasing)

Motion (Mendoza/McClendon): To adopt Motion Consent Agenda item B4, as recommended. Roll call vote: **approved** 6-0-1; Beeson declared a conflict of interest.

III. BID PROTEST HEARING / BID AWARD

Mayor Krieger declared a conflict of interest due to being a subcontractor on the bid for the project.

Bid Protest Hearing: Fire Department Pre-Engineered Training Tower and Burn Building – Pursuant to Yuma City Code Section §36-55 Hearing on bid protest for Fire Department Pre-Engineered Training Tower and Burn Building. (Bid 2008000328) (Eng)

Deputy Mayor Johnson opened the hearing at 5:43 p.m.

Deputy Mayor Johnson stated that the bid protest hearing is in pursuant to Yuma City Code Section 36-55 and relates to the Fire Department's Pre-Engineered Training Tower and Burn Building. Public comments will not be taken, as this is not a public hearing. Only those parties involved in the dispute will have the opportunity to speak.

Watson stated the Fire Department's Pre-Engineered Training Tower and Burn Building would be used by the fire department for training in fire rescue and fire suppression; the building is pre-fabricated. The City opened up the bid and a number of bids were received, with DPE Construction being the apparent lowest responsive/responsible bidder. The City has reviewed the content of the bid and concluded that staff's recommendation is to continue with the lowest bidder; the minor informalities brought forward in the protest are invalid reasons to reject the bid.

Shawn Garner, representing Eckard Commercial Construction, stated that although the hearing is not open to public input, he feels since the contractors have an interest in the matter they should be allowed to express their opinions. **Deputy Mayor Johnson** acknowledged Garner's comments; however, he stated the bid protest isn't a matter of the subcontractors. Johnson requested that involved parties keep their comments to 15 minutes.

Garner stated that Eckard Commercial Construction filed the bid protest and presented the following arguments:

- Eckard believes the bid submitted by DPE is non-responsive and does not comply with the requirements as set forth in the bid instructions.
 - Paragraph 17 of the bid instructions states each bidder must list the name of the subcontractors to be employed for the work in the proper space on the bid form.
 - DPE has submitted a bid that does not have a subcontractor listed for the electrical work.
- DPE is a General Contractor that holds a B license; not the required A license and not a specialty license (L14) required for electrical work.
- Reference in the staff report states DPE possesses an A license, a general engineering license.
 - The A license covers the construction and connection with fixed works, such as streets, bridges, tunnels, the electrical wiring for lamps, et cetera.
 - The B License covers construction of structures
 - The construction, alteration, repair and connection with any structure built such as the Fire Training Tower and Burn Building.
- This project will require electrical and plumbing components therefore it will require subcontractors with a specialty license.
 - DPE does not have an electrical license, it once had a plumbing license but that license is currently revoked.

- DPE must employ a subcontractor in order to complete this project and must list the subcontractor on the bid form.
- Eckard Commercial Construction is the second lowest bidder with a difference of 1.5% of the total cost of the project and clearly lists all the subcontractors on the bid form.
- In Arizona, the question was posed to the Attorney General as to whether or not a list of subcontractors in the bid is a statutory requirement
 - The Attorney General's response: "There is no Arizona law which specifically requires the general contractor to submit a list of his subcontractors however such a requirement may be implied by the law."
 - There are implications due to the verification of employment contractors must submit with the bid forms; in order to verify the subcontractors meet the employment requirements, the City or town must know who the subcontractors are.
- The City's bid instructions require the subcontractors be listed and once they are listed they can not be changed, unless approved by the Director of Engineering
- Several states require, statutorily, all the subcontractors to be used in a public works project be listed on the bid.
 - Such provisions generally intend to discourage bid shopping.
 - Per California legislation "bid shopping in connection with the construction, alteration and repair of public improvements often results in poor quality material and workmanship to the detriment of the public, deprive the public of full benefits of fair competitions among prime contractors and subcontractors and lead to insolvencies, loss of wages to employees and other evils."
 - When subcontractors aren't listed, it allows the contractor to shop out the bid after the contract has been awarded.
 - It is not Eckard's position that DPE is engaging in bid shopping, but the rules were written because of the risk of bid shopping.
- If a contractor failed to submit the bid with a bond available, the bid would be deemed non-responsive/non-compliant and would be thrown out.
- City staff listed two reasons to overlook the requirement of listing the subcontractors:
 - Per the staff report "The failure of DPE to complete the subcontractor section is a minor informality"
 - A minor informality, per the staff report, is "one that is merely a matter of form and not of substance.... A deviation is only material when it gives a bidder a competitive advantage over the other bidders, which it did not do in this case"
- The bottom line is that listing the subcontractors is the City's rule
 - If the City decides to revoke the rule, they can; however, a rule on the books helps preserve the integrity of the City. The bid process needs to be enforced.

Troy Eckard, Eckard Commercial Construction, stated this bid protest is a serious matter not only to his company but for the subcontractors as well. Contracts have been lost by Eckard for many reasons but lessons were learned and bids have been won along the way. When he is wrong because a bid has been disqualified for any reason or it's not the qualified low number he walks away; however, when a bid is the compliant low bidder he asks to be treated fairly. It is naive of the City staff to say that this exception is minor and it shall have no consequence. The next time someone turns in a bid without acknowledging an addendum, will it be thrown out? If a bid is turned in a minute late, will be thrown out? Bids that are not in compliance with the rule of submitting a complete bid list should also be disqualified. Understandably, price is an overriding factor; however, in this case there is a 1.5% on a \$1.2 million project budgeted at \$1.5 million. The City is getting a good value for their money no matter who is awarded the contract. If the

City allows a general contractor to not submit a subcontractors list as required, eventually somebody will take advantage of that and it will give him/her an advantage. This is not a minor issue to people in this industry. The purpose of a public bid is for it to be clear, open and consistent.

Continuing, **Eckard** stated that many subcontractors, throughout this country, have fought for years to have these lists included on their bids. City staff does not seem to understand the bidding process from the contractor's perspective. The project requires a B1 license; the City's bid documents state this requirement clearly. The bid forms repeatedly state the importance of being familiar with the bid form, laws, acts, ordinances of the state, city and county. The City also has a requirement that as a contractor on a commercial project, a permit can not be pulled without listing an electrical and plumbing subcontractor. The lack of complying with the rules normally result in the bid being disregarded. He suggested City staff needs to run a tighter process and uphold the rules consistently to avoid future bid protests. Awarding the contract to DPE will open a flood gate to those companies that will want to come in and not comply with the rules. It is incumbent on the City Council to ensure the City is run in accordance with its rules, regulations and a policy of treating the bidders in a fair and consistent manner.

Garner stated that although it is common knowledge that Don Peterson owns an electric company, it is not an acceptable excuse for not listing the electric subcontractor on the bid list. DPE is the one that needs to have the proper license or the bid in noncompliant.

Johnson, in light of the statements made about the City's bid process, asked staff to briefly explain past practice.

Pfannenstiel stated when a bid is received, staff reviews who the bid is from and the dollar amount of their bid. A spreadsheet is created listing the bidders, identifying the unit pricing and the subcontractors listed and it is then forwarded to the Engineering Department for a recommendation. In the past, minor mistakes such as a bidder not using the proper name on their bid forms and a bid that failed to submit a bid bond on the proper bid bond form were deemed as minor technicalities by outside legal council. The bond was recognized by the State of Arizona which also declared it a minor informality. The City allows contractors to modify their subcontractors list after the bid has been awarded, with prior approval from the City Engineer.

Stuart asked for clarification. Has the City previously awarded contracts in spite of minor informalities such as might appear in DPE's bid? **Pfannenstiel**: Yes. There was a bid protest hearing on the West Wetlands Park, DPE vs. Yuma Valley Contractors, due to the failure of a price being listed on a line. In that case, it was ruled a minor informality because the price was included in another line item.

McClendon inquired what the City would consider as a major item. **Pfannenstiel**: An unsigned bid, the lack of a bid bond or proper licensing would qualify as a major item. **McClendon**: Was it assumed that since DPE owned an electrical company they would serve as the subcontractor? Do companies get extra points for having all their subs listed? **Pfannenstiel**: Most construction contract bids are awarded based on price and in this case DPE was the apparent lowest responsive/responsible bidder. **McClendon** asked if construction bids are awarded on price, then is it not required to provide the list of subcontractors?

Pfannenstiel stated that many times the bids have more or less lines than what may be required for the job and can result in leaving out the name of a subcontractor, occasionally an additional subcontractor will be listed in an area the City may have forgotten to list.

Beeson asked for clarification on whether or not electrical is required in this project. Referring to the addendums issued in the bid, **Pfannenstiel** stated that when questions are received through Purchasing, they are forward to Engineering for answers, which is the standard procedure. Those answers are then generated as an addendum and sent out to all the contractors who picked up plans/specs. One question submitted was, "Who is providing the electrical design drawings?" The answer provided was, "There is no underground electrical required for this project. Shop drawings shall be submitted including electrical drawings required for the control unit and all other systems required for the buildings to provide a live fire training system. Underground electrical is being installed as part of Phase 1 of this project". Phase one is currently under construction by BTZ Zellers.

Beeson: Is a subcontractor list a requirement? **Pfannenstiel:** In the Bid Project Manual, item 17 states that each bidder must list the name of subcontractors proposed to be employed for work in the proper spaces on the form. Bids in the past did not list all of the subcontractors. **Beeson:** Would this requirement be overlooked on a project such as City Hall or the Police Department? **Pfannenstiel:** It would depend on the critical state of what the subcontractor is being used for. If a building was being constructed, the requirement of listing electrical and/or plumbing subcontractors would be significant.

McClendon: If these two bids came in at equal amounts, how would staff determine who to award the project to? Would the subcontractors list be a consideration? **Pfannenstiel:** If there were a tie bid, staff would make their recommendation based on past experience with the City.

Steve Shadle, representing DPE Construction, presented the following arguments:

- Don Peterson owns a number of companies, City staff is aware of those companies
 - Westmoor Electric
 - Westmoor Plumbing Solutions
 - Pacific Steel
 - Desert Road Builders
- Garner claimed Peterson's licenses have been suspended for DPE, this is not true.
 - When DPE existed as a single company, they obtained the different licenses within the company; however, DPE has expanded, and now owns different companies specific to electrical, construction and plumbing.
- The Attorney General's opinion, as pointed out by Garner, states the subcontractor list is not required.
- There is precedent that indicates many bids didn't contain all of the subcontractors
- The electrical and plumbing is a small amount of money in the bid
- DPE's bid is responsive and the failure to name subsidiary companies is a technicality
- The project manual states the City reserves the right to reject any and all bids, waive technicalities, and advertise for new bids, or to perform work in house when it is the best interest for the City.
- As pointed out, many times there are more subs than there are lines on the form.
- The City gets good prices and quality work because they are doing their job and they are not reliant on technicalities.
- Bid shopping doesn't apply in this situation
- Peterson e-verifies employees to ensure they are legal, as do all contractors; the verification of employment form was included in the bid.

Don Peterson, DPE Construction, stated that he was on the other side of the protest in the West Wetlands project against Yuma Valley Contractors. Yuma Valley Contractors bid packet contained a blank line for a

question pertaining to unit costs and there were uncompleted forms. This was determined to be a minor technicality as well and the main award went to Yuma Valley Contractors. DPE proceeded to the next job and still continued bidding on City projects.

McClendon: Do you normally list electrical or plumbing but not the actual name of the company you own? Do you just assume staff knows those things? **Peterson:** No; plumbing would not have been listed because up until recently the license was in house and the listing of an electrical subcontractor was an oversight. This is a tough construction economy and other companies know DPE has their own in house capabilities; as long as DPE owns the companies, they will never shop for bids.

Motion (Mendoza/McClendon): To close the Bid Protest Hearing. Voice vote: **approved** 6-0-1; Mayor Krieger declared a conflict; Bid Protest Hearing closed at 6:43 p.m.

Motion (Mendoza/Johnson): To declare deficiencies cited by Eckard Commercial Construction Inc. in its letter dated December 21, 2009 to be minor informalities, to waive the said informalities and to deny the bid protest.

Stuart stated that the City is in financial straights, and is looking to save money anywhere it can. The City has the precedent of selecting the lowest bidder and waiving technicalities.

Roll call vote: **adopted** 6-0-1; Mayor Krieger declared a conflict.

Motion (Mendoza/McClendon): To award the bid for the construction of the Fire Department Pre-Engineered Training Tower and Burn Building to the lowest responsive, responsible bidder: DPE Construction, Inc. for \$1,203,840.00. Roll call vote: **adopted** 6-0-1; Mayor Krieger declared a conflict.

IV. RESOLUTION CONSENT AGENDA

Motion (McClendon/Mendoza): To approve the Resolution Consent Agenda as recommended.

Kuiper displayed the following title:

Resolution R2010-05

A resolution of the City Council of the City of Yuma, Arizona, authorizing and approving the execution of a Transportation Development Fee Credit Agreement with the owner of Saguaro Unit No. 1 Subdivision
(Eng)

Roll call vote: **adopted** 7-0.

V. ADOPTION OF ORDINANCES CONSENT AGENDA

Motion (Mendoza/McClendon): To adopt the Ordinances Consent Agenda as recommended.

Kuiper displayed the following titles:

Ordinance O2010-09

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, relating to zoning regulations, providing for changes to the Zoning Code to correct the word “signing” with the word “signage,” and providing penalties for violations thereof (DCD/Planning)

Ordinance O2010-10

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, relating to zoning regulations, to allow zoning maps to automatically reflect extending a new zoning district to the centerline of contiguous rights-of-way using an existing legal description

(Z2009-017) (DCD/Planning)

Ordinance O2010-12

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, providing for changes to the Cielo Verde Specific Plan and providing penalties for violations thereof

(Z2009-022) (DCD/Planning)

Ordinance O2010-13

An ordinance of the City Council of the City of Yuma, Arizona, authorizing and directing that a certain parcel of real property, hereinafter described, be acquired by the City of Yuma, by gift, purchase or under the power of eminent domain, for the reason that such property is required to improve the public roadway and utility infrastructure and other public purposes as may be related thereto, and authorizing payment therefor, together with costs necessary for the acquisition of said parcel of real property

(Right-of-way acquisition: 12th Street, Lot 237 of Magnolia Village Unit No. 3 (Eng)

Roll call vote: **adopted** 7-0.

VI. INTRODUCTION OF ORDINANCES

Motion (Johnson/Mendoza): To amend Ordinance O2010-11 at Section 1 (H), as follows:

That the words “whose primary purpose is to service” be amended to read “whose primary purpose is to serve”; and, that the words “in the industrial development” be inserted after the words “businesses and employees”. Roll call vote: **adopted** 7-0.

Kuiper displayed the following title:

Ordinance O2010-11, as amended

An ordinance of the City Council of the City of Yuma, Arizona, amending Chapter 154 of the Yuma City Code, as amended, to add several new commercial uses as permitted uses in the Light Industrial (L-I) District

(Z2009-021) (DCD/Planning)

VII. PUBLIC HEARINGS – none

VIII. PALO VERDE WALL

The following speakers spoke in opposition to the wall remaining in place:

Phil Schrier, 2542 S. Mary Avenue

Angelo Lemme, 270 E. 26th Place

John Colvin, 3619 S. Pitahaya Drive

Gail Roberts, 1767 E. 26th Place

Andy Smith, 1952 E. San Marcos

Eliana Osborn, 1502 E. Kuns Court, stated she is neither for or against the wall but for the sake of the residents it should be removed.

Tom Thode, 1368 S. 7th Avenue

The following speakers spoke in support of the wall remaining in place:

Craig Barrows, 903 E. Palo Verde Street

Dick Gravely, 603 E. Palo Verde Street

Vicki Fritz, 843 E. Palo Verde Street

Jenny Rowlison, 913 E. Palo Verde Street

Jeff Fritz, 843 E. Palo Verde Street

Bart Baker, 152 S. 1st Avenue

Thadd Baker, 933 E. Palo Verde Street

Stephanie O'Neill, 1003 E. Palo Verde Street

Key Discussion Points:

- The plane crashing into the neighborhood did not result in any loss of life due to lack of access
- There are no emergency response related issues with leaving the wall up. However, opening the wall will create safety issues with increased traffic
- Palo Verde Street is narrow; adding more traffic will create problems
 - The streets are not designed to handle more than residential traffic
- Traffic issues will occur at Palo Verde and Arizona Avenue with increased traffic
 - The cost involved to fix the intersection or widen Palo Verde Street would be extensive
- Removal of the wall will result in a decrease of property values in the neighborhood
 - Loss in tax dollars if the value of homes goes down
- City money should be spent on other projects at this time
- There are eight entrances to the subdivision, access isn't the real issue
 - Newer subdivisions have as few as two
- It will be safer for neighborhood children if the wall remains up.
- The dog park will be a bigger issue if the wall is removed
- The cost of removing the wall would be approximately \$80,000; currently, the City can not afford the expense
- MCAS emergency response had problems getting into the subdivision.
- The public has the right to use Palo Verde Street
- The wall was put up illegally
- A study conducted in the past stated the wall should not have been constructed and should come down
- Access to 32nd Street is near impossible from any of the internal streets

- Opening Palo Verde would divert traffic on east/west streets and allow another access for internal streets
 - 32nd Street and 24th Street are considerably busy streets
- 26th Place and San Marcos are even narrower than Palo Verde
- Palo Verde Street residents often use 26th Place to get to Pacific Avenue
- Traffic on 26th Place is busy, making it difficult to back out of driveways
- Speeders and the increased traffic on 26th Place is a safety concern; taking the wall down would alleviate some of the traffic concerns
- Traffic needs to be shared by all the residents
- The wall makes it inconvenient for residents to get out of the subdivision
- Signage on Arizona Avenue will need to be revised, if the wall comes down
- Palo Verde Street is a 60 foot wide street – newer subdivisions have between 30 to 40 foot streets
- An initiative petition was filed; however when it went to court, the people who brought it forward were not heard
 - Signatures were collected and the issue was litigated
 - The City and the Palo Verde homeowners were in favor of the wall. The City did not mislead the judge nor did the City go to great lengths to convince the judge that the petition should pass
 - The issue of the wall was not decided, a technicality was decided.
 - **Moore** clarified that the City did litigate the issue and encouraged the petitioner to join in the action as a real party in interest; however, the petitioner was unable to do so
- If a traffic study was done today, it would recommend the removal of the wall
- Palo Verde Street was designed to be an arterial street, lawns encroach into City right-of-way
- The City Council must do what is best for the traffic flow within the City of Yuma
- Proposition 207 allows for private property owners to bring a claim against the local government if they take a land use action that diminishes their property value
 - Taking down the wall will result in the loss of residential character of the neighborhood which in turn will diminish property values.
 - The law applies to the State of Arizona and its political subdivisions, not the Federal government
 - Prop 207 refers to government land use regulations imposed after a person owns the property however it does not apply to land use laws that limit or prohibit a use where there is protection of the public health and safety, including rules and regulations that relate to transportation and traffic control.
 - The City would have 90 days to change their decision after receiving the demand by the property owners.
- Past City Councils have unanimously voted against taking down the wall
- Palo Verde is designated as a collector street which funnels traffic to an arterial
- Claims against the City could be excessive if Palo Verde is turned into an arterial street
- The sidewalks would have to be redone, yards would have to be addressed and the five-way stop at Arizona Avenue and Palo Verde Street would have to be looked at if Palo Verde is opened up
- Added traffic would impact the neighborhood
- Speed bumps on 26th Place and San Marcos would be ideal to deter speeders
- Other less costly solutions should be evaluated

Johnson clarified that the City does not have one source of money; there are dedicated tax sources, such as the road tax, that the voters specified where they could be spent. Monies from one fund can not be used on a project that is paid for from different fund.

Discussion

Mendoza and Beeson inquired about the information requested at last night's Worksession.

The meeting recessed at 8:08 p.m. The meeting reconvened at 8:14 p.m. with all councilmembers present.

Brooberg provided the following:

- The Bark Park is open 6 days a week and receives an average of 50-80 people using the facility daily.
- Other similar locations around town that have commercial and residential properties side by side:
 - The closest match would be the Rio Colorado Shopping Center located at the northwest corner of 16th Street and Avenue B; the shopping center backs up to residential properties.
 - Another example is along 4th Avenue where there is a half a block of commercial properties that back up to residential properties.
- The 1991 traffic study is still fairly current, traffic has increased from 2,100 vehicles per day to 2,300-2,400 vehicles per day on 26th Place
 - The rights-of-way on 26th Place and Palo Verde Street were dedicated within ten years of each other, and both have a 60 foot right-of-way from Arizona Avenue to Pacific.
 - 26th Place right-of-way dovetails into the San Marcos right-of-way just to the west of Pacific Avenue
 - Both roadways have a nominal 38-39 foot driving surface which is measured between the face of one curb and the face of the other
 - Both roadways have a four foot sidewalk behind the curb and gutter

Mendoza: Consideration should be given to both sides before giving direction to staff. Community members often approach City Councilmembers in regards to the Palo Verde wall and there is noted passion on both sides. The Mayor stated someone has volunteered to take down the wall and another person is willing to buy a brick, with that, a fundraiser should be considered with proceeds going to the local food bank. In driving the area, another dead end wall was discovered at the end of Barbara Avenue. The wall backs up to the north side of the old Max Club and yet nobody is saying anything about that wall. The City is not in a financial state to spend \$80,000 to take down the wall although he agrees with removing the wall.

Stuart made the following points:

- The Palo Verde wall has been a repeated topic of discussion; it last appeared on the agenda in 1991
- The City paid \$17,000 for a consultant to render a professional opinion which was to open the street; that opinion was ignored.
- Many of the homes on Palo Verde Street were built long before Pacific Avenue between 32nd Street and 16th Street became a high traffic commercial corridor
- There is significant traffic impacting the intersection of Palo Verde and Arizona Avenue.
 - That intersection has been the scene of many accidents, there is always broken glass in the roadway as a result.
- There is a solution available that will not please everyone but will address the central issue over time
 - Remove the wall and place a movable barrier, like seen on canal banks, and install an Opticom system that can be utilized by emergency response vehicles.
 - Correct the intersection of Arizona Avenue and Palo Verde Street,
 - Once the intersection is corrected, remove the emergency access barriers.

Stuart stated that until the intersection at Palo Verde Street and Arizona Avenue is corrected and the accident hazard is satisfactorily addressed, he is strongly opposed to the removal of the wall which will subsequently increase the already heavy traffic flow at the intersection.

Mayor Krieger responded to Councilmember Mendoza's comments stating that the comments he has received about purchasing a brick were facetious in nature. Regarding the barricade on Barbara Avenue, the street does not continue through to a lit intersection on Pacific and is not an existing alignment. Councilmember Stuart's proposal has no cost savings to the City, the road would still have to be reconstructed. The intersection at Palo Verde Street and Arizona Avenue is a disaster and it is going to be that way for a while. Increased traffic flow does have a calming effect, and that is what the City Council should be considering.

Motion #1 (Mayor Krieger/Johnson): To direct staff to proceed with the steps necessary to remove the Palo Verde wall and shift Capital Improvement Program funds as needed for completion of this project.

Discussion

Mendoza asked if straightening the intersection at Palo Verde Street and Arizona Avenue would require the purchasing of homes. **Brooberg**: The preliminary studies conducted by the City indicated that two properties on the northwest corner of the intersection of Palo Verde Street and Arizona Avenue would have to be acquired. In addition, a partial acquisition of two properties at the southeast corner would be necessary to properly align the intersection.

Johnson stated that at last night's worksession, it was pointed out that there is no proper cul-de-sac for emergency vehicles to turn around at the Palo Verde wall. How many properties would have to be purchased to install a proper cul-de-sac? **Brooberg**: One property may have to be acquired.

Johnson asked Councilmember Stuart if he contemplated the road being built to accommodate emergency response vehicles and having the locked gate installed to only be accessible to emergency vehicles. **Stuart**: Yes, it would serve as an access point for the emergency vehicles until the intersection is corrected.

Stuart inquired about an accident at the intersection where a vehicle ran the stop sign and subsequently hit a house. **Brooberg** stated he didn't have specific knowledge of the accident, but accident records for the last five years indicated between 2 and 4 accidents have been reported in that intersection.

Johnson stated that there is a serious safety access problem that has to be addressed and there is a lack of current information to make an informed decision. Councilmember Stuart's proposed comprise has a great deal of merit and would eliminate the emergency access problems.

Roll call vote: **failed** 1-6; Stuart, Mendoza, Beeson, McClendon, Brooks-Gurrola, and Johnson voting Nay.

Motion #2 (Stuart/Johnson): To remove the wall, pave the street to connect for emergency access vehicles and erect a gate or barrier for emergency access for fire and police vehicles only.

Mendoza stated Councilmember Stuart's proposal adds \$30,000 to the \$80,000 estimated to remove the wall. **Watson** stated that the City has precedent in the community; the condominiums in Barkley Ranch Subdivision have a gate which allows for public safety access. Whether the City decides on an Opticom system or something similar, a lasting solution would need to be identified. **Baer** stated the gate that was installed at a water treatment plant cost \$20,000 to \$25,000; it included a card reader not an Opticom system. **Watson** stated that the \$80,000 estimate includes the design for the curb, gutter or drainage associated with the connection along with inspection and construction.

Mayor Krieger: How could a capital improvement project be created for something when there is virtually no intent to put traffic on the road in any specific timeframe? It is necessary to control the water and erosion but the motion is intending the road to be strictly limited as a pass through for emergency vehicles for an indefinite period of time. **Watson** stated the action would be to open the wall and provide an emergency opening. The Arizona Avenue and Palo Verde Street intersection has been a concern for a long time; if the road is opened maybe the intersection can be reconstructed simultaneously.

Brooberg stated if City Council directs City staff to proceed then a project would be created in the Capital Improvement Program and monies from other projects will be transferred into this project. The first thing would be to transfer enough money to cover the design phase of the project then a more accurate cost of construction can be given. The money for the project would come out of road specific funds.

Johnson stated that the City has a standard emergency access control gate that is installed as a secondary access to subdivisions and the fire department carries bolt cutters on their vehicles if they need access. What would be the cost of that type of arraignment? **Brooberg:** In this case, the City would be looking at \$3,000 to \$4,000.

Beeson reminded City Council that the intent is to save money in the tough economy. The Fire and Police Departments know how to access those streets and if the City proceeds with installing a gate, it is spending money on a project that isn't necessary. Leaving the wall up costs nothing to the City.

Roll call vote: **failed** 2-5; Mendoza, Beeson, McClendon, Brooks-Gurrola, and Mayor Krieger voting nay.

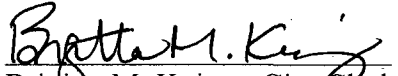
IX. APPOINTMENTS, ANNOUNCEMENTS AND SCHEDULING

Motion (Beeson/Stuart): To move the Regular City Council meeting of Wednesday, February 17, 2010 at 5:30 p.m. to Tuesday, February, 16, 2010 at 5:30 p.m. The City Council meeting will be held following the Regular Worksession on that date. Voice vote: **approved** 7-0.

X. SUMMARY OF CURRENT EVENTS - none

XI. EXECUTIVE SESSION/ADJOURNMENT

Mayor Krieger adjourned the meeting at 8:54 p.m. No Executive Session was held.


Brigitta M. Kuiper, City Clerk

APPROVED:


Alan L. Krieger, Mayor

